

WINDSOR POLICE ASSOCIATION



548 WINDSOR AVENUE, WINDSOR, ONTARIO N9A 1J5

"Protecting the People who Protect the Public"



4 May 2012

SENT VIA FACSIMILE ONLY TO: (416) 314-0198

Mr. David C. Gavsie, Chair
Ontario Civilian Police Commission
605 – 250 Dundas Street West
Toronto, Ontario
M7A 2T3

Dear Mr. Gavsie,

RE: Request for OCPC Investigation into Misconduct of the Chair of the Windsor Police Services Board, City of Windsor Mayor Eddie Francis

By way of introduction, my name is Edward Parent, and I am the Chief Administrative Officer ["CAO"] of the Windsor Police Association in Windsor, Ontario. I write to you in my capacity of CAO, for which I am responsible for the administration and governance of our 600+ Members.

As you are likely aware, the Windsor Police Service has been in the news quite often over the course of the last six months, facing allegations of police brutality, corruption, perjury and other forms of misconduct, from various members of the public and certain media outlets. I am sure that you are also aware that our former Police Chief, Gary Smith, was forced to retire early by the Chair of the Windsor Police Services Board, Mayor Eddie Francis, last December.

At various times throughout the media campaign against the Windsor Police, specifically through articles written by and published in the Windsor Star, Mayor Francis has made disparaging comments about the integrity of the Windsor Police Service and has

criticized the processes for professional disciplinary hearings as prescribed by the *Police Services Act* (for example, see the attached article “Windsor mayor calls for harsher penalties urged for cops who lie”, Windsor Star article by Sarah Sacheli, 2 May 2012).

In my respectful view, as the Chair of the Windsor Police Services Board, Mayor Francis should be acting in a more professional manner. Rather than publicly criticizing the Windsor Police Service, Mayor Francis should be working with the Windsor Police Service and Windsor Police Association to improve any perceived shortcomings in the delivery of police services in the City of Windsor. Specifically, the Mayor (as Chair) should be attending at and actively participating in each and every meeting of the Windsor Police Services Board, as he is statutorily required to do.

This brings me to the purpose of my letter to you. Pursuant to Ontario Regulation 421/97, “Members of Police Services Boards – Code of Conduct” [“O. Reg. 421/97”], police services boards in the Province of Ontario are required to uphold and respect a statutorily-mandated Code of Conduct, much as police officers are required to do. Specifically, O. Reg. 421/97 requires the following of members of police services boards:

- “Board members shall attend and actively participate in all board meetings.” (Section 1, emphasis added)
- “Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office.” (Section 7, emphasis added)
- “Board members shall uphold the letter and spirit of the Code of Conduct set out in this Regulation and shall discharge their duties in a manner that will inspire public confidence in the abilities and integrity of the board.” (Section 8, emphasis added)

- “Board members shall refrain from engaging in conduct that would discredit or compromise the integrity of the board or the police force.” (Section 13, emphasis added)

Respectfully, Mayor Eddie Francis has failed in each of the above duties, and in turn has failed the Windsor Police Service, the membership of the Windsor Police Association, and most importantly, the people of the City of Windsor. Mayor Francis has not attended and actively participated in all board meetings. Mayor Francis has exhibited obvious partiality against the Windsor Police Service and certain of its members, specifically Detective David Van Buskirk, in various media outlets. Mayor Francis’ actions and words have not inspired public confidence in either the abilities or integrity of the Board, or in the Windsor Police Service. Mayor Francis’ conduct has attributed to the discredit, and compromised integrity, of the Windsor Police Service.

In support of my position, I have attached for your consideration an article that was written by Ms. Anne Jarvis and published in the Windsor Star on 6 January 2012, titled “Jarvis: Where was Francis before the stories? Mayor has routinely missed police board meetings since April 2010”. As you will see from the article, “[t]here have been 21 board meetings since Det. David Van Buskirk is alleged to have brutally beaten Dr. Tyceer Abouhassan in April 2010, the case that sparked the latest firestorm. Francis was present for entire meetings only nine times. That’s less than half the meetings. He missed six meetings, more than a quarter of the total. He attended one by phone. He attended the closed session but not the public session of three other meetings. He left early on two additional occasions” (emphasis added). In the article, Mayor Francis candidly admits that he has missed the meetings he is said to have missed, and provides reasons which have nothing to do with the governance of the Windsor Police Service. The Mayor has also skipped Windsor Police Services Board meetings subsequent to the publication of this article.

I believe that Mayor Eddie Francis, as Chair of the Windsor Police Services Board, has violated the Code of Conduct for Members of Police Services Boards as set out in O.

Reg. 421/97, and that his wilful disregard for that law has had a direct impact upon the integrity of the governance of the Windsor Police Service, which has led to the political turmoil in which the Service has found itself in recent months.

In light of the above, I am requesting that the Ontario Civilian Police Commission conduct an investigation into the conduct or the performance of the duties of the Chair of the Windsor Police Services Board, Mayor Eddie Francis, pursuant to its statutory powers as found in section 25(1) of the *Police Services Act*. As you know, s. 25 reads as follows:

- “The Commission may, on its own motion or at the request of the Solicitor General, the Independent Police Review Director, a municipal council or a board, investigate, inquire into and report on: (a) the conduct or the performance of duties of [...] a member of a board”.

In my view, the Commission has ample grounds to initiate such an investigation on its own motion, in light of the materials included herein.

In addition to the above, I would request that the Commission enforce section 14(1) of O. Reg. 421/97, which reads:

- “A board member whose conduct or performance is being investigated or inquired into by the Commission under section 25 of the Act or is the subject of a hearing before the Commission under that section shall decline to exercise his or her duties as a member of the board for the duration of the investigation or inquiry and hearing.”

I would further encourage the Commission to consider, if it finds that Mayor Francis has committed misconduct, imposing upon Mayor Francis the maximum penalty available to it – removal of Mayor Francis from the Windsor Police Services Board, thereby terminating his position as a member of same.

As the public complainant in this matter, I would invite you to contact me personally to further discuss this matter, and to assist in your investigation, should you choose to do so.

Your time and consideration of the above is appreciated.

Sincerely,


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Cc: The Solicitor General of Ontario

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Windsor Police Services Board

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Police Services Act
Loi sur les services policiers

ONTARIO REGULATION 421/97

MEMBERS OF POLICE SERVICES BOARDS — CODE OF CONDUCT

Consolidation Period: From June 13, 2005 to the e-Laws currency date.

Last amendment: O.Reg. 298/05.

This Regulation is made in English only.

1. Board members shall attend and actively participate in all board meetings.
O. Reg. 421/97, s. 1.
2. Board members shall not interfere with the police force's operational decisions and responsibilities or with the day-to-day operation of the police force, including the recruitment and promotion of police officers. O. Reg. 421/97, s. 2.
3. Board members shall undergo any training that may be provided or required for them by the Solicitor General. O. Reg. 421/97, s. 3.
4. Board members shall keep confidential any information disclosed or discussed at a meeting of the board, or part of a meeting of the board, that was closed to the public.
O. Reg. 421/97, s. 4.
5. No board member shall purport to speak on behalf of the board unless he or she is authorized by the board to do so. O. Reg. 421/97, s. 5.
6. A board member who expresses disagreement with a decision of the board shall make it clear that he or she is expressing a personal opinion. O. Reg. 421/97, s. 6.
7. Board members shall discharge their duties loyally, faithfully, impartially and according to the Act, any other Act and any regulation, rule or by-law, as provided in their oath or affirmation of office. O. Reg. 421/97, s. 7.
8. Board members shall uphold the letter and spirit of the Code of Conduct set out in this Regulation and shall discharge their duties in a manner that will inspire public confidence in the abilities and integrity of the board. O. Reg. 421/97, s. 8.
9. Board members shall discharge their duties in a manner that respects the dignity of individuals and in accordance with the *Human Rights Code* and the *Charter of Rights and Freedoms* (Canada). O. Reg. 421/97, s. 9.
10. Board members shall not use their office to advance their interests or the interests of any person or organization with whom or with which they are associated.
O. Reg. 421/97, s. 10.

11. (1) Board members shall not use their office to obtain employment with the board or the police force for themselves or their family member. O. Reg. 298/05, s. 1.

(2) For the purpose of subsection (1),

“family member” means the parent, spouse or child of the person, as those terms are defined in section 1 of the *Municipal Conflict of Interest Act*. O. Reg. 421/97, s. 11 (2).

12. A board member who applies for employment with the police force, including employment on contract or on fee for service, shall immediately resign from the board. O. Reg. 421/97, s. 12.

13. Board members shall refrain from engaging in conduct that would discredit or compromise the integrity of the board or the police force. O. Reg. 421/97, s. 13.

14. (1) A board member whose conduct or performance is being investigated or inquired into by the Commission under section 25 of the Act or is the subject of a hearing before the Commission under that section shall decline to exercise his or her duties as a member of the board for the duration of the investigation or inquiry and hearing. O. Reg. 277/00, s. 1.

(2) If the application of subsection (1) results in a board not having enough members able to exercise their duties in order to constitute a quorum during an investigation, inquiry or hearing under section 25 of the Act, the chair of the Commission may appoint that number of persons necessary to constitute a quorum, who shall act in the place of the members who are unable to exercise their duties. O. Reg. 277/00, s. 1.

(3) The chair of the Commission,

(a) shall specify in an appointment made under subsection (2) that the appointee may only exercise such duties as are necessary for the effective operation of the board during the investigation, inquiry or hearing and, for such purpose, may specify the duties the appointee may or may not exercise; and

(b) shall cancel an appointment made under subsection (2) as soon as a member of the board who declined to exercise his or her duties under subsection (1) resumes exercising his or her duties or is replaced under subsection 25 (8) of the Act. O. Reg. 277/00, s. 1.

15. If the board determines that a board member has breached the Code of Conduct set out in this Regulation, the board shall record that determination in its minutes and may,

(a) require the member to appear before the board and be reprimanded;

(b) request that the Ministry of the Solicitor General conduct an investigation into the member's conduct; or

(c) request that the Commission conduct an investigation into the member's conduct under section 25 of the Act. O. Reg. 421/97, s. 15.

Jarvis: Where was Francis before the stories?

Mayor has routinely missed police board meetings since April 2010

BY ANNE JARVIS, THE WINDSOR STAR JANUARY 6, 2012



Windsor Star columnist Anne Jarvis.

Photograph by: Staff, The Windsor Star

The Windsor Police Services Board is the body that governs the troubled Windsor Police Service. Mayor Eddie Francis has been chairman of that board since he was elected mayor in 2003. The Windsor Star last month detailed a long history of police brutality and coverups, and Francis has been talking tough - since the stories were published.

"(The police) know in no uncertain terms, they've heard from me as chairman of the board and as mayor, that we're not happy, we have concerns," he has told me.

"I've indicated the status quo is not going to do," he went on.

"There is going to be significant change," he said at a news conference.

Indeed, after he had a "discussion" with former police chief Gary Smith, Smith abruptly retired.

There's another news conference today outlining more changes.

Good. But some people are asking, where was Francis before the stories were published?

This much I know: he wasn't at a lot of the board meetings.

There have been 21 board meetings since Det. David Van Buskirk is alleged to have brutally beaten Dr. Tyceer Abouhassan in April 2010, the case that sparked the latest firestorm. Francis was present for entire meetings only nine times. That's less than half the meetings. He missed six meetings, more

than a quarter of the total. He attended one by phone. He attended the closed session but not the public session of three other meetings. He left early on two additional occasions.

Francis says he missed a meeting in late 2010 because he was in Korea negotiating the deal for Samsung. He missed another in early 2011 because Chrysler CEO Sergio Marchionne was here for an announcement.

He says he missed another late last year because he was hosting potential investors from a financial services company.

"Those (missed meetings) are in direct relation to the times when I was working on economic development files and a lot of travel I was doing out of town on those files.

There are times - and I've made no secret about it - if there are investors in town, and if there is an economic opportunity, that those files require my attention. It's not a question of me not attending those meetings because I'm golfing, because I'm on vacation, because I'm at a social club somewhere. I'm not attending those meetings because there are other duties that I'm undertaking."

Fair enough. But is this a chairman who is spread too thin, who is distracted? Because this board can't afford that.

If he has to miss a meeting, that's why there is a vice-chair, he said. The vice-chair calls him and tells him what happened.

"Because I miss board meetings doesn't mean I'm not there," he said. "It doesn't mean I'm not informed, I'm not aware. If I miss a board meeting, I get updated. I know what's going on at board meetings. I know what's being discussed, what they've resolved."

But is that the way to run a police board in the midst of a firestorm, drawing national headlines?

Besides, Francis said, a lot is being done outside public board meetings. He has been meeting with acting Chief Al Frederick and Deputy Chief Jerome Brannagan every day, he said.

"There are the phone calls, the discussions, the meetings we have outside the public board - things you don't see in the minutes (of public board meetings)," he said.

Which raises another question: What is happening behind closed doors?

The board has been hamstrung trying to deal with the force, Francis said. The Police Services Act dictates that the board cannot interfere in the daily operation of the force, he said. Why is Van Buskirk only suspended with pay now? Because that's all the act will allow the force to do, Francis says.

What about the other, similar incidents involving Van Buskirk in the 1990s and settled in lawsuits? Under the act, says Francis, if a cop is clean for two years, previous disciplinary measures are expunged from his record.

" If all this is true - and I've heard from others that this act and other bodies governing police in Ontario make cops almost untouchable - the province needs to change how we deal with our men and women in blue.

Right now, with an acting police chief eager to please because he wants the job permanently, this board has a chance to make unprecedented changes.

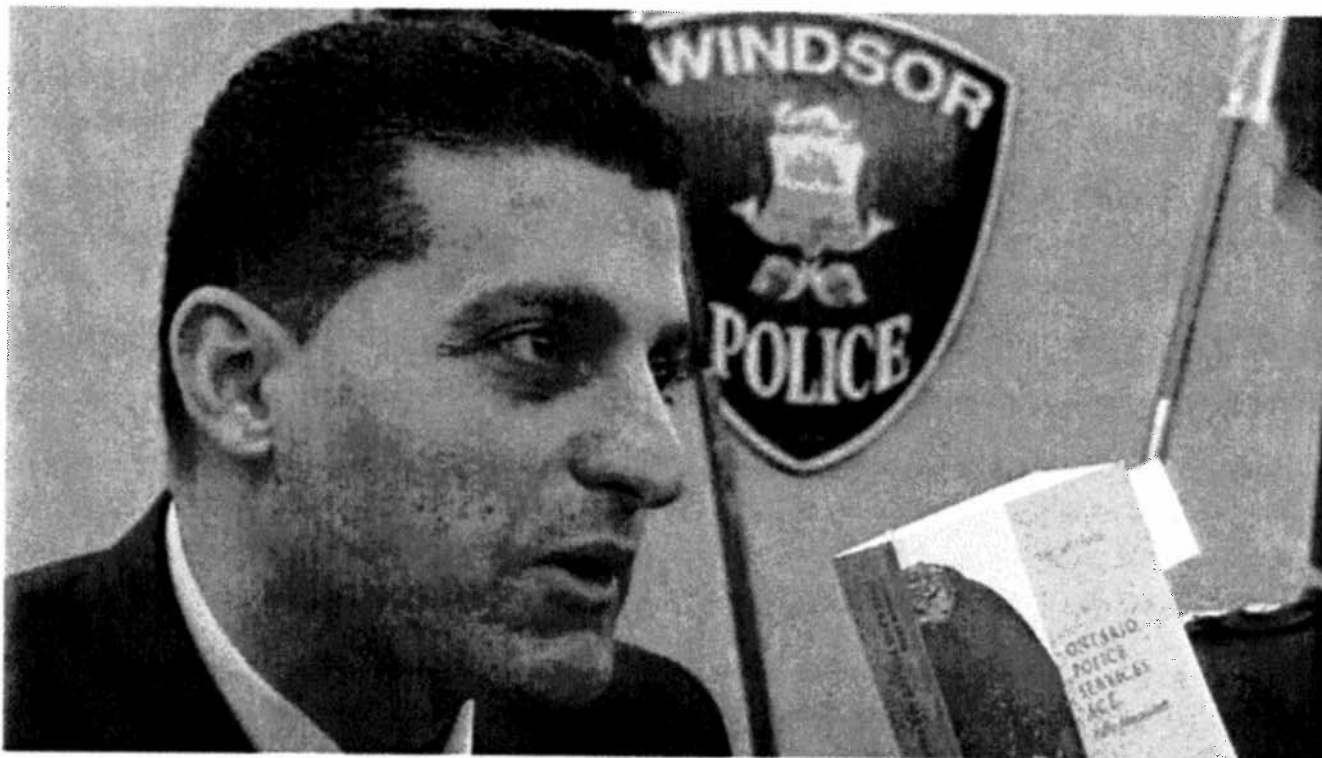
That's what I expect to see. And I expect the full and undivided attention of the mayor and board chairman.

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Windsor mayor calls for harsher penalties urged for cops who lie

BY SARAH SACHELI, THE WINDSOR STAR MAY 2, 2012



Windsor Mayor Eddie Francis, holding the Police Services Act 2008-09 edition, holds a press conference where 27 recommendations were announced Jan. 6, 2012.

Photograph by: Nick Brancaccio, The Windsor Star

WINDSOR, Ont. -- Windsor's mayor is calling on Ontario's attorney general to revamp the Police Services Act to impose more severe penalties on officers who lie.

"The attorney general should be looking at a wholesale change of the Police Services Act," said Eddie Francis. "If you change the Police Services Act, I guarantee you that you'll change behaviour."

Attorney General John Gerretsen announced Monday he is taking on the problem of police officers lying in court.

"The attorney general has asked the chief prosecutor to look into the issue of police testimony, and to report back later in the summer with his advice," Brendan Crawley, the AG's spokesman, told The Star Tuesday.

But Francis said police officers have little to fear from prosecution under the Police Services Act even if they have done something wrong, like lie in court.

The case of Windsor police Det. David Van Buskirk, who will be sentenced today for his unprovoked assault on a local doctor in 2010, highlighted the act's many shortcomings, Francis said.

Except for full-blown hearings, discipline is meted out behind closed doors, according to the act. Letters of discipline are removed from an officer's personnel file every couple of years if the officer isn't caught doing something wrong in the meantime. Even if suspended from duty pending a disciplinary hearing, the officer continues to collect pay.

Van Buskirk remained on the job for more than a year after his unprovoked attack on Dr. Tyceer Abouhassan outside the Jackson Park Health Centre on April 22, 2010. Van Buskirk mistook Abouhassan for a man who had harassed his 12-year-old daughter at the nearby tennis club.

The assault was captured by security cameras. The video contradicts what Van Buskirk wrote in his report of the incident. In Van Buskirk's version of events, Abouhassan "became aggressive so quickly," immediately grabbing Van Buskirk by the throat and pushed him backward. The video shows Van Buskirk struck the first blow and appears to be continuing to strike Abouhassan as the doctor, a much smaller man, has fallen to the ground.

Abouhassan, who is visually impaired, suffered head injuries, a broken nose and a detached retina.

On the basis of Van Buskirk's report, Abouhassan was charged with assaulting a peace officer, a criminal charge that was later stayed by the Crown after an investigation by provincial watchdog agencies.

Last week, Van Buskirk pleaded guilty to assault causing bodily harm. He admitted that he grabbed Abouhassan by the neck, and as the doctor tried to step back and get away, struck him in the face at least three times.

Van Buskirk's guilty plea came after nearly two years of courthouse manoeuvrings that included firing his first lawyer and asking for adjournments of the case.

The judge sentencing Van Buskirk today is the same judge who, in a 1994 case, slammed him for laying a baseless assault charge against a man. Van Buskirk had dislocated the man's elbow, an irony not lost on the judge.

"By way of general commentary, I am always amazed that any time that there are injuries which necessitate hospital treatment, that one can always find an assault police or resist police charge being laid," said Justice Donald Ebbs. "In my view, there's absolutely no foundation in this particular case for an assault peace officer charge."

Ebbs went on to throw out the drunk driving charge against the man, finding Van Buskirk, then a breathalyzer expert, to be an unreliable witness.

Crawley, in an email response to inquiries by The Star, said the attorney general intends to take on the issue of officers lying in court, raising it with police chiefs during his regular meetings with them.

"He will also be raising this matter with his federal, provincial and territorial colleagues, because this matter has a national scope," he said,

The attorney general's spokesman avoided questions about Van Buskirk. "The attorney general will not be commenting on individual cases," Crawley said.

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